

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FREDERICK LAMAR DIXON,

Petitioner,

No. 11-CV-10816-DT

vs.

Hon. Gerald E. Rosen

JOE BARRETT,

Respondent.

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ORDER DENYING REQUEST FOR EXTENSION  
OF TIME TO FILE A NOTICE OF APPEAL

This matter is before the Court on the request of Petitioner Frederick Lamar Dixon to extend the time for filing a Notice of Appeal to appeal this Court's May 21, 2013 Order denying his petition for a writ of habeas corpus. Although Dixon's request was docketed as "filed" by the Court clerk on July 5, 2013, the accompanying cover letter is dated June 31, 2013. Therefore, applying the "prison mail box rule," the Court deems Petitioner's request filed on that date, June 31, 2013. *See Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379 (1988). Petitioner states in his Request that he never received a copy of the May 21, 2013 Order until June 22, 2013.

Normally a Notice of Appeal in a civil case must be filed within 30 days after entry of the judgment or order appealed from. *See* Fed. R. App. P. 4(a)(1)(A). That deadline in Petitioner's case, thus, was June 21, 2013. Subsection (5)(A) of Fed. R. App. P. 4(a), however, permits a district court to extend the time to file a Notice of Appeal if a party so moves no later than 30 days after the time prescribed by Rule 4(a) expires, and

demonstrates in his motion excusable neglect or good cause. Having filed his request only ten days after the normal appeal deadline, Petitioner would qualify for an extension under this Rule.

However, in its May 21, 2013 Order, the Court also denied Petitioner a certificate of appealability.<sup>1</sup> See 5/21/13 Order Adopting Magistrate Judge's Report and Recommendation and Dismissing Petitioner's Habeas Corpus Action, p. 2 [Dkt. # 16]. Petitioner's request for an extension of time to file a late Notice of Appeal is, therefore, moot.

For these reasons,

IT IS HEREBY ORDERED that Petitioner's Request to File Notice of Appeal Late [Dkt. # 20] is DENIED.

s/Gerald E. Rosen  
Chief Judge, United States District Court

Dated: July 29, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 29, 2013, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5135

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<sup>1</sup> The Court also denied Petitioner leave to appeal *in forma pauperis*.